INTERIOR BOARD OF INDIAN APPEALS

Melissa M. Peall v. Acting Portland Area Director, Bureau of Indian Affairs

16 IBIA 163 (06/21/1988)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

MELISSA M. PEALL
v.
ACTING AREA DIRECTOR, PORTLAND AREA OFFICE,
BUREAU OF INDIAN AFFAIRS

IBIA 88-3-A Decided June 21, 1998

Appeal from a decision of the Acting Portland Area Director, Bureau of Indian Affairs, establishing the rental rate for an orchard lease.

Affirmed.

1. Administrative Procedure: Burden of Proof--Indians: Leases and Permits: Generally

   In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of was erroneous or not supported by substantial evidence.

APPEARANCES: James P. Hutton, Esq., Yakima, Washington, for Ross H. Larson; Colleen Kelley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for appellee.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

By memorandum dated October 13, 1987, the Assistant Secretary--Indian Affairs referred to the Board of Indian Appeals (Board) an appeal from Melissa M. Peall (appellant). Appellant sought review of a January 15, 1987, decision of the Acting Portland Area Director, Bureau of Indian Affairs (BIA; appellee), concerning a rental rate adjustment for Lease No. 1-1021, Ahtanum Orchards, Yakima Agency. For the reasons discussed below, the Board affirms that decision.

Background

The background information concerning this appeal is succinctly set forth in appellee's January 15, 1987, decision at pages 2-3:

> Farming (Orchard) Lease No. 1-1021 covering Yakima Allotment Nos. 945, 946 and 2778 was entered into on November 29, 1979, with Ralph Broetje as lessee. The lease became effective on the first day of January, 1980 and continues until the last day of December, 2004. At the time of execution, the lease contained 230.60 acres, more or less. With respect to the annual rental payments, the first page of the lease indicates:

> Due upon approval, with like payments due on or before each 12/1 thereafter until a total of SIX (6) payments are made.....$24,213.00
>
> Due on or before 12/1/85, with like payments due on or before each 12/1 thereafter until a total of NINETEEN (19) payments are made....$34,590.00*
>
> * SUBJECT TO RENTAL REVIEW

Exhibit "A" of the lease, Provision No. 18, under the heading of RENTAL REVIEW, indicates:

> It is understood and agreed this lease, at not less than 5 year intervals, shall be subject to review of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvements or developments required by the contract or the contribution value of such improvements.
>
> It is understood that the first rental adjustment will be made on the seventh (7th) year of the lease (crop year 1986). Thereafter, the rental reviews will be made at five year intervals.

On September 27, 1982, Ralph Broetje assigned Lease No. 1-1021 to Ross A. Larson, Vern K. Larson, Wm. James Stark, and Roy A. Sample [(Larson)]. Rudolph Saluskin and Melissa M. Peall, the two landlowners involved, were also parties to the Assignment and Modification. The Modification terms were indicated on Exhibit "B":

> 1. Increase acreage by an additional 15.05 acres, New total acreage: 245.65 acres, more or less.
>
> 2. Increase of annual rent by $1,580.25 (15.05 acres x $105.00/acres); New Annual Rent: $25,793.25 effective for payment due on or before 12/1/82. Furthermore, the increase due 12/1/85 will be $36,847.50; (15.05 acres x $105.00/acre) Subject to Rental Adjustment.
>
> 3. All additional acreage is subject to Rental Adjustment at the same time as remaining acreage involved in initial negotiation.

An appraisal dated September 11, 1985, reviewed the $25,793.25 annual rental. This report recommended that the rent be adjusted to $29,400.00.

> On December 20, 1985, a letter was sent advising [Larson] that "A review of similar operations supports the determination that an increase of $3,606.75 is equitable on this tract. The adjusted rent, effective for payment due December 1, 1985 (Crop Year 1986) is $29,400.00." No appeals were filed by [Larson] or by the landowners within the requisite 30 day period.
>
> The next correspondence in the file is the October 3, 1986, decision of the Yakima Agency Superintendent [(Superintendent)] which [Larson appealed]. This letter indicated that:
>
> > In reviewing the file it was discovered that the Modification and Assignment of lease approved October 19, 1982, to which [Larson was] the assignee, indicated that through negotiation with the landowners rental would increase to $36,847.50 effective for the payment due December 1, 1985. It is therefore necessary to withdraw the notice of adjustment dated December 20, 1985, and to advise [Larson] that the adjusted rental, effective for payment due December 1, 1985 (Crop Year 1986) is $36,847.50.

Larson appealed the October 3, 1986, decision to appellee, who, by letter dated January 15, 1987, determined that the "subject to rental adjustment" language in the lease "negate[d] the effect of the figures stated as due on or before December 1, 1985" (Decision at page 4). Appellee, therefore, reversed the Superintendent's decision and reestablished the annual rent as $29,400.

Appellant filed an appeal from this decision under 25 CFR Part 2. Additionally, appellant requested assistance from BIA in preparing her appeal. Appellee referred appellant to the Superintendent for whatever assistance she needed in preparing her appeal. Appellant's notice of appeal under Part 2 did not state the grounds for the appeal, and she did not file a brief.

By memorandum dated October 13, 1987, the Assistant Secretary--Indian Affairs referred the appeal to the Board. On November 6, 1987, after receiving the administrative record, the Board issued a notice of docketing setting forth the parties' briefing privileges. Appellant has not filed a brief with the Board.

Discussion and Conclusions

[1] In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of was erroneous or not supported by substantial evidence. Strebe v. Deputy Assistant Secretary--Indian Affairs (Operations), 16 IBIA 62 (1988); Visser v. Portland Area Director, 7 IBIA 22 (1978). In this case, appellant's notice of appeal does not set forth any grounds for the appeal, and she has not filed a brief indicating those grounds.

Because she has not given any reasons for the appeal, appellant cannot sustain her burden of proof. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 15, 1987, decision of the Acting Portland Area Director is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

_____

1/ Appellant does not allege that BIA failed to provide her with assistance in preparing her appeal. There is no evidence in the record to indicate whether or not appellant carried through with her request for assistance by contacting the Superintendent.